

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

AIDA REYES,)	
Claimant,)	IC 02-002658
)	IC 02-526466
v.)	IC 03-516497
)	
OMNIPURE FILTER COMPANY, INC.,)	
Employer, and STATE INSURANCE FUND,)	FINDINGS OF FACT,
Surety,)	CONCLUSIONS OF LAW,
)	AND RECOMMENDATION
and)	
)	
OMNIPURE FILTER COMPANY, INC.,)	FILED OCT 24 2005
Employer, and EVEREST NATIONAL)	
INSURANCE COMPANY, Surety,)	
)	
Defendants.)	
)	

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Boise, Idaho on March 18, 2005. Richard S. Owen represented Claimant. Andrew J. Waldera represented Omnipure and Everest. James A. Ford represented Omnipure and State Insurance Fund ("SIF"). The parties took posthearing depositions and submitted briefs. The case is now ready for decision.

ISSUES

After due notice and by agreement of the parties at hearing, the issues are:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident;
2. Whether Claimant is medically stable and, if so, on what date; and

3. Whether and to what extent Claimant is entitled to the following benefits:

- (a) temporary disability; and
- (b) medical care.

The issues of permanent impairment and disability are reserved.

CONTENTIONS OF THE PARTIES

Claimant contends she injured her left shoulder in three accidents at work. She is not medically stable and is entitled to benefits, both TTD and medical care. The frustration expressed by some treating physicians is a result of a language barrier and Claimant's depression which has arisen as a result of her chronic pain and inability to work and is not a basis for cutting off benefits.

Everest covered Employer's risk at the time of the first accident. Everest contends Claimant's initial injury healed without residual symptoms or impairment and it paid all benefits due Claimant from that accident. No medical testimony relates her current condition to the first accident.

State Insurance Fund covered the risk at the time of Claimant's second accident and afterward. SIF contends Claimant's current condition was merely temporarily aggravated by the second accident. It disputes whether the event of July 31, 2003 constitutes an accident under Idaho Workers' Compensation Law. Claimant was medically stable and no longer in need of medical care when it discontinued paying benefits. Omnipure made suitable work available which Claimant refused.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

- 1. Oral testimony at hearing by Claimant; Dawn Rae Amseutz, Omnipure's production manager; and David Shafer, a supervisor;

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2. Claimant's Exhibits 1 – 11;
3. Everest's Exhibits A and B;
4. SIF's Exhibits 1 – 24; and
5. Post-hearing depositions of orthopedic surgeon George A. Nicola, M.D.; orthopedic surgeon Jeffry P. Menzner, M.D.; and family practice doctor Douglas M. Hill, M.D., with their exhibits.

FINDINGS OF FACT

1. Claimant worked for Employer making “spring disk filters” for water filters. This is a very light-duty job, performed seated. Repetitive hand motions are required.

2. On February 7, 2002, Claimant fell at work. She reported the accident and sought medical attention the next day. She had multiple bruises. Her knee healed uneventfully. Her left wrist, arm, and shoulder took more time. Douglas Hill, M.D., treated her from February 8 to March 8, 2002. He noted some “embellishment” of symptoms on Claimant's part. A left shoulder X-ray taken February 15 showed no abnormality. After some physical therapy and about six weeks of temporary disability, Claimant returned to work about March 29, 2002.

3. On March 20, 2002, George Nicola, M.D. examined Claimant. He noted her complaints of continuing pain were “poorly localized” in her left arm. He found no impingement sign. He noted she was “not cooperating” on testing and exhibited a “lack of effort.” He opined she suffered some significant depression. Dr. Nicola released Claimant to light-duty work with her left arm, normal duty otherwise. On a follow-up visit on April 15, 2002, Dr. Nicola noted Claimant was happier and she reported her shoulder was much improved. He released her to full duty without restriction.

4. Dr. Nicola conducted a final examination relating to this accident on June 28, 2002. She reported “no discomfort whatsoever” and Dr. Nicola described her recovery as

“remarkable and complete.” He opined her medically stable without permanent impairment or work restriction. In deposition, he opined her primary problem was depression. As of the June 28, 2002 visit, Claimant’s depression had been ameliorated by medication. Although Surety was willing to pay to treat the depression initially, Dr. Nicola opined the condition was nonindustrial.

5. Claimant suffered a second work accident on December 18, 2002. Although the initial report is vague, Claimant did report it. Her supervisor accepted that she fell. She sought medical attention on December 19, 2002. Kevin Chicoine, M.D., examined her and found contusions. Among other diagnoses, he diagnosed a left shoulder strain. A shoulder X-ray showed, “Tiny calcification is noted in the soft tissues adjacent to the greater tuberosity which may indicate some early tendinosis.” It did not, however, find any acute bony abnormality. Dr. Chicoine treated her through February 20, 2003. His examinations showed inconsistent reporting of pain in the left shoulder musculature and impingement signs which were occasionally negative, occasionally mildly positive. On January 23, 2003, he released Claimant to work without restrictions. Claimant returned to work.

6. On March 6, 2003, Tracy Johnson, M.D., examined Claimant. Dr. Johnson diagnosed myofascial pain and released Claimant to full work without restrictions. At an April 3 follow-up visit, Claimant reported she was “100% better” and without symptoms. Dr. Johnson opined Claimant was medically stable and without permanent impairment.

7. On an undated industrial accident form Claimant identified an injury date of July 31, 2003. The report vaguely refers to “repetitive movement” without any reference to any fall or other accident.

8. On August 4, 2003, Dr. Chicoine resumed treating Claimant. He diagnosed a left

shoulder strain and linked it to the December 2002 injury. The record does not show whether or when Dr. Chicoine became aware of an alleged July 31, 2003 accident. On August 14, 2003, Dr. Chicoine noted Claimant reported a change in her job duties which she linked to increasing left arm and shoulder pain. He examined Claimant on a few follow-up visits until September 23, 2003, then monthly in October and November. His examinations generally found mildly positive impingement signs. He maintained his diagnosis of a left shoulder strain and opined it was the result of the December 2002 injury.

9. On October 16, 2003, Joseph G. Daines, M.D., evaluated Claimant. At first, he was aware only of the December 18, 2002 accident and questioned whether there had been an earlier one. Claimant did describe an incident in July 2003 where she felt a “snap” in her shoulder. On examination, he found positive impingement signs. X-rays showed spurring at the cervical vertebrae and not much degenerative changes in the left shoulder. He considered she suffered a possible rotator cuff tear and recommended an MRI. Ultimately he opined her condition related to either the February 2002 or December 2002 accident, or both.

10. On November 26, 2003, Claimant returned to Dr. Nicola. She described she had been hit by a box without any reference to when. He found significant rotator cuff pathology and impingement.

11. The MRI was performed on December 1, 2003. It showed mild inflammation but no tear. Dr. Nicola opined at deposition that inflammation is very common even in asymptomatic patients.

12. On December 5, 2003, Dr. Nicola’s physician assistant Jeff Smith examined Claimant. He performed a cortisone injection which provided moderate relief. He released Claimant to light duty. On December 16, 2003, Dr. Nicola noted Claimant was “not exerting

full effort.” He noted her depression. He released her to right-handed work and ordered an FCE to “turn her loose.” The FCE performed one month later came back invalid due to poor effort by Claimant. On January 28, 2004, Dr. Nicola released Claimant to regular work. He opined her medically stable without impairment. He stated, “I do not think she has a significant industrial injury.” He suggested further treatment on a nonindustrial basis.

13. When Claimant did not return to work following Dr. Nicola’s release, Employer wrote her off as having quit. Temporary disability benefits were discontinued in February 2004.

14. At Dr. Nicola’s referral, Claimant visited rheumatologist Peggy Ann F. Rupp, M.D. Dr. Rupp examined Claimant on March 10, 2004. Dr. Rupp opined Claimant suffered from tendinitis, likely relating to her injuries, but no acute nor chronic arthritis. Later, Dr. Rupp revised her opinion and stated it was “not possible to determine” whether Claimant’s condition was work related as of the date of Dr. Rupp’s examinations.

15. Dr. Nicola disagreed with Dr. Rupp’s opinions. He opined Claimant’s examinations and MRI were inconsistent with chronic rotator cuff tendinitis.

16. On July 27, 2004, Jeffry P. Menzner, M.D., examined Claimant. Claimant reported the July 2003 “snap” incident. Dr. Menzner diagnosed rotator cuff impingement tendinitis. He recommended additional physical therapy. In deposition, Dr. Menzner opined that although additional medical care might be helpful, it was not necessary. Dr. Menzner opined he was not able to diagnose depression.

17. On August 20, 2004, Dr. Nicola responded that he had previously sent her to physical therapy without result. “I think the patient showed very poor participation, even during examination.” He reported her examination showed no evidence of impingement and recommended against surgery. In deposition Dr. Nicola opined all of Claimant’s

musculoskeletal complaints were caused by her depression.

18. Prior medical records show Claimant occasionally complained of left shoulder pain and suffered from depression in the 1990s.

Discussion and Further Findings

19. A claimant must prove she was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995).

20. Here, Claimant showed she sustained industrial accidents on February 7, 2002 and December 18, 2002. The evidence shows that the first accident healed without restriction by April 15, 2003. Follow-up visits through June 2003 which confirmed her recovery are reasonably related to this February 7, 2002 accident.

21. Claimant's second accident occurred December 18, 2002. Claimant achieved medical stability without restriction as of January 23, 2003. Nevertheless, medical care provided to the date of the hearing was reasonable and related to that accident.

22. Because Claimant speaks only Spanish, her testimony was obtained through an interpreter. The Commission is accustomed to the difficulties inherent in conducting a hearing through a language barrier. However, here Claimant exhibited extra confusion and provided more nonresponsive answers when being cross examined by Defendants than upon direct examination by her own attorney. Claimant's testimony is not credible. Some treating physicians noted similar difficulties which raise credibility questions about the validity of her

responses during physical examinations.

23. Claimant's treating doctors, Nicola and Hill, observed Claimant over time. Their opinions were persuasive. Combined with the prior medical records which refer to preexisting depression and occasional shoulder pain, their opinions show, more likely than not, that Claimant's depression was unrelated to her work and that her depression caused increased shoulder complaints. Claimant's theory – that her shoulder pain caused or exacerbated her depression – has it backward. Claimant failed to show her continuing shoulder complaints or other conditions were work related beyond the dates set forth above.

24. Claimant failed to show she suffered a compensable accident causing an injury about July 2003 or that any compensable TTD or medical care benefits should be related to it.

25. Claimant failed to show she is entitled to TTD or medical care benefits after the date of hearing.

CONCLUSIONS OF LAW

1. Claimant suffered two compensable accidents for which she is entitled to TTD and medical care benefits;

2. Claimant became medically stable from the February 7, 2002 accident on April 15, 2002 and is entitled to TTD benefits for lost work time during that period;

3. Claimant became medically stable from the December 18, 2002 accident on January 23, 2003 and is entitled to TTD benefits for lost work time during that period;

4. Claimant failed to show she is entitled to TTD benefits outside of the dates set forth above;

5. Claimant is entitled to medical care benefits for the February 7, 2002 accident through June 2002, and for the December 18, 2002 accident to the date of hearing.

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RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusions of law and issue an appropriate final order.

DATED in Boise, Idaho, on this 14TH day of October, 2005.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 24TH day of OCTOBER, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

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